
From: [Shope, John](#)
To: [Leonard Bennett](#)
Cc: [Craig Marchiando](#); [Matt Erazquin](#); [Devata, Pamela](#); [Drury, John](#); [Conroy, Kevin J. \(Associate\)](#)
Subject: RE: Melo - Proposed Stipulation of Dismissal
Date: Wednesday, March 11, 2020 7:52:03 PM

Len:

Your demand for arbitration is frivolous. Under Fed. R. Civ. P. 41, “if the plaintiff previously dismissed any federal or state court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” As you will doubtless recall, the case that was pending before Judge Hamilton until earlier today before your voluntary dismissal was the second case filed by Mr. Melo asserting the same claims Zumper. Mr. Melo voluntarily dismissed his earlier suit when he did not receive a further extension of time to respond to a motion to stay pending arbitration. Mr. Melo’s claim is now clearly barred under the doctrine of res judicata, and, should he proceed with the arbitration claim attached to your email below, Zumper will seek the costs of any arbitration under American Arbitration Association Consumer Rule 44(c).

Zumper does not agree to arbitration in northern Virginia. The parties have already agreed that any arbitration will be held in San Francisco, California, which is a location reasonably convenient to all parties, particularly given the purported scale of Mr. Melo’s claim, the numerous claims that his demand asserts under California law, your history of litigation there, and your colleagues’ membership in the California bar.

Regards, John Shope

John A. Shope
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
Tel. (617)832-1233
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jshope@foleyhoag.com

From: Leonard Bennett [mailto:lenbennett@clalegal.com]
Sent: Wednesday, March 11, 2020 4:57 PM
To: Shope, John <JJS@foleyhoag.com>
Cc: Craig Marchiando <craig@clalegal.com>; Matt Erazquin <matt@clalegal.com>
Subject: Re: Melo - Proposed Stipulation of Dismissal

John -

As we could not hear back from you, we went ahead and filed our AAA arbitration claim.
Attached.

Case:012000036899.

Please confirm that Zumper agrees to have the case heard in the jurisdiction in which Mr. Melo resides - in Northern Virginia.

Len Bennett

From: Leonard Bennett
Sent: Wednesday, March 11, 2020 1:15:05 PM
To: Shope, John
Cc: Craig Marchiando; Matt Erausquin; Devata, Pamela; Drury, John
Subject: Re: Melo - Proposed Stipulation of Dismissal

John -

Are you opposed to dismissal (vs a stay)? Why?

Len Bennett

Sent from my iPhone

On Mar 11, 2020, at 12:45 PM, Shope, John <JJS@foleyhoag.com> wrote:

Craig:

Sorry for the slow response – I was on the road yesterday. Zumper will stipulate that Zumper's motion to compel arbitration and to stay proceedings is granted, that the plaintiff is ordered to arbitrate his claims against Zumper, and that the plaintiff's claims in the pending case against Zumper are stayed pending the arbitration. (We believe that the plaintiff's claims against Trade House are subject to arbitration as well, but recognize that that issue is now pending before the court.) We do not agree to your proposed alternative stipulation. Regards, John Shope

John A. Shope
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From: Craig Marchiando [<mailto:craig@clalegal.com>]
Sent: Wednesday, March 11, 2020 11:37 AM
To: Shope, John <JJS@foleyhoag.com>
Cc: Leonard Bennett <lenbennett@clalegal.com>; Matt Erausquin <matt@clalegal.com>
Subject: Re: Melo - Proposed Stipulation of Dismissal

John:

Following up on this. Thanks.

Craig C. Marchiando
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Newport News, VA 23601
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From: Craig Marchiando <craig@clalegal.com>
Date: Tuesday, March 10, 2020 at 10:20 AM
To: "Shope, John" <JJS@foleyhoag.com>
Cc: Leonard Bennett <lenbennett@clalegal.com>, Matt Erausquin <matt@clalegal.com>
Subject: Melo - Proposed Stipulation of Dismissal

John:

We propose filing the attached stipulation in Melo, dismissing claims against Zumper only. Please let us know if you would like to discuss or have edits. Thanks.

Craig C. Marchiando
CONSUMER LITIGATION ASSOCIATES, P.C.

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